

ITEM NO.5

COURT NO.6

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.1532/2026

[Arising out of impugned final judgment and order dated 08-09-2025 in ITA No. 267/2023 passed by the High Court of Delhi at New Delhi]

WOODLAND (AERO CLUB) PRIVATE LIMITED DIRECTOR Petitioner(s)

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX Respondent(s)

(FOR ADMISSION)

Date : 27-01-2026 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) :

Mr. S Ganesh, Sr. Adv.
Mr. Diggaj Pathak, AOR
Mr. Anukalp Jain, Adv.
Mr. Abhijit Mittal, Adv.
Ms. Shweta Sharma, Adv.
Ms. Trishita Bera, Adv.
Ms. Nishtha Nanda, Adv.
Ms. Shaivya Singh, Adv.
Ms. Vaibhavi Pathak, Adv.

For Respondent(s) :

UPON hearing the counsel the Court made the following
O R D E R

1. The High Court recorded the following findings as regards as the issue in question.

- i. Employer's contributions under Section 36(1)(iv) and employees' contributions covered under Section 36(1)(va) read with Section 2(24)(x) are fundamentally different in nature and must be treated separately.
- ii. Employees' contribution deducted from their salaries are deemed to be income under Section 2(24)(x) and are held in trust by the employer. The employers can claim deduction only if they deposit these amounts on or before the statutory due date under Section 36(1)(va).

- iii. The *non-obstante* clause in Section 43B cannot be applied to employees' contributions governed by Section 36(1)(va).
- iv. *Alom Extrusions* (supra) has been distinguished as the same has not considered Sections 2(24)(x) and 36(1)(va).
- v. Explanation 5 to Section 43B was not considered at all while arriving at the decision that employees' contribution must be deposited on or before the due dates under relevant statutes."

2. As per Section 2(24)(x), any amount recovered by the employer from the employees towards their contribution to any provident or superannuation fund or any other fund set up under the provisions of the ESI Act, 1948 or any other fund for the welfare of the employees is income.

3. Section 36(1)(va) of the Act says that any sum so received by the assessee - employer from his employees to which provisions of Section 2(24)(x) applies, the assessee - employer shall be entitled to deduction while computing income under Section 28, if such sum is credited by the assessee - employer to the employees account before the due date.

4. The Explanation to Section 36(1)(va) says that the 'due date' means the date by which the assessee - employer is required to credit the employees contribution in the relevant fund under any Act, Rule, Order or Notification issued thereunder.

5. There are two School of thoughts as regards the interpretation of the words "due date".

6. A combined reading of the Section 2(24)(x) and that Section 36(1)(va) of the Act, *prima facie* is indicative that any sum received by the assessee - employer from any of his employees as contribution towards PF & ESI is the income of the assessee under Section 2(24)(x) and it continues to be so, unless it is credited by the assessee - employer to the employee's account in the relevant fund on or before the due date specified under the relevant PF, ESI Act.

7. The employee's contribution towards PF, ESI received by the

assessee - employer is his income under Section 2(24)(x) and if he wants to have it deducted from his income under Section 36(1)(va), he must credit the same to the employee's account in the relevant fund on or before the due date specified under the relevant PF,ESI Act.

8. The aforesaid view is supported by the following judgments of the High Courts:-

(i) Unifac Management Services (India) (P.) Ltd. v. Dy. CIT [2018] 100 [taxmann.com](#)244 [2019] 260 Taxman 60/[2018] 409 ITR 225 (Mad.), (ii) CIT v. Gujarat State Road Transport Corpn. [2014]41 [taxmann.com](#) 100/366 ITR 170/223 Taxman 398 (Guj.), (iii) CIT v. Merchem Ltd. [2015] 61 [taxmann.com](#) 119/235 Taxman 291/378 ITR 443 (Ker.), (iv) B.S. Patel v. Dy. CIT [2010] 326 ITR 457/[2008] 171 Taxman 304 (MP) and (v) Popular Vehicles & Services Pvt Ltd v. CIT [2018] 96 [taxmann.com](#) 13/257 Taxman 120/406 ITR (Ker).

9. The other view is that there is no difference between employees and employer contribution to PF, ESI and both would be guided by the provisions of Section 43B of the Act so as to allow deduction in the hands of the assessee - employer if the contributions are deposited on or before the due date of filling of return under Section 139(1) of the Income Tax Act, 1961.

10. The aforesaid view is supported by the following Judgments:-

(i) CIT v. Aimil Ltd. [2010] 188 Taxman 265/321 ITR 508 (Delhi HC), (ii) Pr. CIT v. Plamman HR (P) Ltd. (IT Appeal No. 170 of 2018, dated 12.02.2018 (Delhi HC). (iii) CIT v. Nipso Ployfabriks Ltd. [2013] 350 ITR 327/213 Taxman 376/30 [taxmann.com](#)90 (HP). (iv) Sagun Foundry (P.) Ltd. v. CIT [2017] 78 [taxmann.com](#) 47 (All). (v) CIT v. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. [2014] 366 ITR 163/[2013] 217 Taxman 64 (Mag.)/35 [taxmann.com](#) 616 (Raj.). (vi) CIT v. Sabari Enterprises [2008] 298 ITR 141 (Kar). (vii) CIT v. Hemla Embroidery Mills (P.) Ltd. [2014] 366 ITR 167/[2013] 217 Taxman 207/37 [taxmann.com](#) 160 (Punj. & Har.). (viii) CIT v. Ghatge Patil Transports Ltd. [2014] 368 ITR 749/[2015] 53 [taxmann.com](#) 141/228 Taxman 340. (ix) Bihar State Warehousing Corpn. Ltd. v. CIT [2016]

368 ITR 410 (Patna). (x) CIT v. Vijay Shree Ltd. [2014] 43 taxmann.com 396/224 Taxman. 12 (Cal.) (Mag.) (xi) CIT v. Industrial Security & Intelligence India Pvt. Ltd. [Tax Case (Appeal) Nos.585 and 586 of 2015 & M.P.No.1 of 2015, dated 24-7-2015. (xii) Gauhati High Court in the case of CIT v. George Williamson (Assam) Ltd. [2006] 284 ITR 619 (Gauhati). (xiii) CIT v. Kichha Sugar Ltd. [2013] 356 ITR 351/216 Taxman 90/35 taxmann.com 54 (Uttarakhand). (xiv) Pr. CIT v. Plamman HR (P) Ltd, [IT Appeal No. 599 of 2017, dated 11.09.2017].

11. In view of the conflicting opinion, as referred to above, we would like to look into this issue.

12. Issue notice, returnable in four weeks.

13. Dasti, in addition, is permitted.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

38. From a reading of the judgment, the following becomes apparent:

- vi. Employer's contributions under Section 36(1)(iv) and employees' contributions covered under Section 36(1)(va) read with Section 2(24)(x) are fundamentally different in nature and must be treated separately.
- vii. Employees' contribution deducted from their salaries are deemed to be income under Section 2(24)(x) and are held in trust by the employer. The employers can claim deduction only if they deposit these amounts on or before the statutory due date under Section 36(1)(va).
- viii. The *non-obstante* clause in Section 43B cannot be applied to employees' contributions governed by Section 36(1)(va).
- ix. *Alom Extrusions* (supra) has been distinguished as the same has not considered Sections 2(24)(x) and 36(1)(va).
- x. Explanation 5 to Section 43B was not considered at all while arriving at the decision that employees' contribution must be deposited on or before the due dates under relevant statutes.

It may be noted that 'due date' for payment of Provident Fund contributions is 15 days from the end of the month in which wages are paid plus grace period of 5 days.

regarding allow ability under the Income Tax Act towards delayed deposit of Employees Contribution of PF & ESI:

3.1:View that delayed deposit of employees contribution of PF & ESI held as Income u/s 2(24)(x). (View in favour of Revenue).

such as (i) Unifac Management Services (India) (P.) Ltd. v. Dy. CIT [2018] 100 taxmann.com 244 [2019] 260 Taxman 60/[2018] 409 ITR 225 (Mad.), (ii) CITv. Gujarat State Road Transport Corpn. [2014]41 taxmann.com 100/366 ITR 170/223 Taxman 398 (Guj.), (iii) CIT v. Merchem Ltd. [2015] 61 taxmann.com 119/235 Taxman 291/378 ITR 443 (Ker.). (iv) B.S. Patel v. Dy. CIT [2010] 326 ITR 457/[2008] 171 Taxman 304 (MP). (v) Popular Vehicles & Services Pvt Ltd v. CIT [2018] 96 taxmann.com 13/257 Taxman 120/406 ITR (Ker).

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3.1:View that delayed deposit of employees contribution to PF & ESI does not held as Income u/s 2(24)(x). (View in favour of Assessee Employer).

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